

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1116 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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DIRECTOR OF PORTS

Versus

UNUS UMAR,TRADESMAN

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Appearance:

MR HL JANI for Petitioners

None present for Respondent

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 07/02/97

ORAL JUDGMENT

Heard learned counsel for the petitioners and perused the Special Civil Application.

2. The challenge is made by the petitioners to the order dated 27th December 1983 of the Labour Court in Recovery Application No.1764/81, filed by the respondent-workman under Section 33(C)(2) for determination of amount due to six persons including the

3. The respondent was appointed on daily wages in the office of the petitioners in October 1971 and the prayer has been made by him for giving the pay scale under the Desai Pay Commission. The recovery application has been filed for recovery of amount of difference of salary for the period from 1972 to 1980. This Special Civil Application has come up for admission before this Court on 23rd February 1984 and notice was issued. On 20th April 1984, Rule was issued, but interim relief was not granted. Shri H.L. Jani, learned counsel for the petitioners does not dispute that the relief as granted by the Labour Court has already been given to the respondent. In para 4 of the Special Civil Application, the petitioners have come up with the case that the employees under the Director of Ports at Bhavnagar, Porbandar, Veraval and Bedi and other Ports have filed Reference I.T.No.55....R

"Demand No.2: The Workmen who have worked for 240 days or more should be made permanent.

4. The respondent was entitled for the benefit under the said Award as he was appointed in the year 1971 and

the Award was effective till 21st August 1976. The application u/s.33(C)(2) of the Act 1947 though filed in the year 1981, the benefits have been claimed for the period 1971-80, and those benefits were available to the respondent under the aforesaid settlement. The grievance of the petitioners that the matter was pending in Reference No.189/79 is of no significance. Moreover, the petitioners are unable to say what ultimately has been decided in the Industrial Dispute Ref.No.189 of 1979. That reference was stated to be pending in Special Civil Application. In view of this fact, the contention of the learned counsel for the petitioners that till Reference of the year 1979 is decided, the application filed by the respondent u/s.33(2) of the Act 1947 is not maintainable, is not tenable. The learned counsel for the petitioners does not dispute that the respondent was entitled for the benefits of settlement made in the Reference No.55/64.

5. Taking into consideration the totality of the facts of this case, the Labour Court has not committed any error, much less, any error apparent on the face of the Award impugned which calls for interference of this Court under Article 226 of the Constitution. Exercise of jurisdiction under Articles 226/227 of the Constitution, in the matter of orders passed by the Labour Court and challenged on the ground of jurisdiction, even if some substance is found in the contention, but where this Court finds that there is no failure of justice to the petitioner, is not warranted by this Court. In this connection, reference may have to the two decisions of A.M. Allison v. B.L. Sen, reported in AIR 1957 SC 227, and in the case of Balvant Rai v. M.N. Nagrashna, reported in AIR 1960 SC 407. This petition is under Article 227 of the Constitution and it would not be justified in the present case to extend the jurisdiction under the said Article. This Court, under Article 227 of the Constitution, cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. This prerogative is only limited or restricted to the cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice where grave injustice would be done unless the Court interferes. The present one is not a case which falls in the aforesaid category.

6. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. No order as to costs.

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(sunil)